

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEN FORSBERG,

Plaintiff,

v.

MTC FINANCIAL, INC. dba TRUSTEE
CORPS; HOME ALLY FINANCIAL II, LLC,

Defendants.

Case No. 14-00383-JCC

**SECOND AMENDED COMPLAINT
FOR VIOLATIONS OF THE
CONSUMER PROTECTION ACT,
VIOLATIONS OF THE
REQUIREMENTS OF THE DEED OF
TRUST ACT, NEGLIENT AND/OR
INTENTIONAL
MISREPRESENTATION, AND
UNJUST ENRICHMENT**

I. PARTIES

1.1 Plaintiff KEN FORSBERG is currently a resident of Snohomish County, Washington, and he pleads the following allegations, state that those allegations are true of his own knowledge, except as to matters stated on information and belief, and as to those matters, he believes them to be true.

1.2 Mr. Forsberg is the owner of real property located at 2405 W. College Ave, Spokane, Washington 99201 (hereinafter referred to as the "Property").

1.3 Defendant Trustee Corps is a "dba" of MTC Financial, Inc. a Washington

1 corporation which is registered with the Washington Secretary of State. The officers of MTC
 2 are identified in Secretary of State records from 2012 as President/Chairman/Director Rande
 3 Johnson and Secretary/Treasurer/Director Terry Johnsen, with addresses in Santa Ana,
 4 California. A Vice President named Luis Ruelas is listed with an address at 17100 7th Avenue,
 5 Seattle, Washington. Presently, the Johnson are using an address in Irvine, California and Mr.
 6 Ruelas is still listed with the address in Seattle. However, Mr. Forsberg maintains, based upon
 7 information and belief, that Mr. Ruelas nor any other Washington resident is actually an officer
 8 of MTC Financial. Rather, Mr. Ruelas' name is used in order to give the appearance of
 9 complying with the requirements of the DTA that a trustee be a Washington corporation with
 10 one of its officers residing in the state. RCW 61.24.010. All of the operations of Defendant
 11 Trustee Corps were conducted in California, consistent with the fact that the true officers of the
 12 company reside in California. In spite of the fact that Defendant Trustee Corps was not
 13 compliant with the requirements of the DTA, it nevertheless has acted as a foreclosing trustee
 14 in Washington in connection with an attempted foreclosure of the Property and in connection
 15 with the foreclosures of others.

18 1.4 Defendant Home Ally Financial II, LLC ("Home Ally") is a California limited
 19 liability company who appears to be an entity that exists in order to own mortgage loans, some
 20 of which are secured by real property located in the State of Washington. Defendant Home
 21 Ally was formed on or about August 14, 2013.

23 1.5 At all times mentioned herein, the Defendants, and each of them, were the
 24 agents, servants, representatives and/or employees of each of the remaining Defendants and
 25 were acting within the course and scope of such agency or employment. The exact terms and
 26 conditions of the agency, representation or employment relationships are presently unknown to
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1 Plaintiffs, but when the information is ascertained, leave of court will be sought to insert the
2 appropriate allegations.

3 **II. FACTUAL ALLEGATIONS**

4 2.1 Mr. Forsberg is the owner of the Property and has been for several years. He
5 purchased the Property years ago with monies for the down payment from the sale of another
6 piece of real property. The Property is a duplex and he purchased it in order to reside there and
7 to rent the other unit to his brother. They lived in the duplex for several years in this fashion.
8 Mr. Forsberg obtained a loan to finance the rest of the purchase price from Homecomings
9 Financial Network, Inc. in June 2004 and he signed a Promissory Note payable to
10 Homecomings in connection with that loan. (Homecomings has also since ceased doing
11 business.) He also signed a Deed of Trust listing Homecomings as the “Lender” and MERS as
12 the “beneficiary” and nominee for Homecomings.
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14 2.2 At some point during the time period that the loan was being serviced and Mr.
15 Forsberg was receiving monthly statements, the payee changed from Homecomings to GMAC.
16 Mr. Forsberg had no way of knowing the reason for the change, but he did make his payments
17 to GMAC as a result of the notices that he received instructing him to do so. However, in Fall
18 2010, he began to experience financial problems and began speaking with representatives at
19 GMAC about avoiding foreclosure. He was told by these representatives that he needed to be
20 more than two months behind on the payments in order to qualify for a loan modification so he
21 stopped making payments. He submitted the paperwork he was sent by GMAC and continued
22 to call in, but got the constant runaround. Sometime late in 2010, he received another default
23 notice from GMAC and when he called in, he was told to just “pay up” as the only way to
24 avoid foreclosure, so he did bring the loan current.
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1 2.3 By this time, Mr. Forsberg was not living at the Property and was trying to rent
2 out the units, but he was traveling back and forth a great deal from the Everett area, where he
3 was living, to Spokane in order to care for his parents. He fell behind on mortgage payments
4 again in January 2011 and was in communication with GMAC about a loan modification. He
5 submitted a package in April 2011 for review and consideration. He submitted packages for
6 both his first and second position liens, as they were both being serviced by GMAC. In July
7 2011, Mr. Forsberg was told by GMAC to contact a credit counselor and go through a review
8 in order to be approved for a loan modification. He then received a loan modification offer on
9 the second mortgage but in order to accept it, he would have had to make a large down
10 payment that would have made it impossible for him to pay his living expenses. He was having
11 trouble during this time with the renters in the Property and had had to spend money to evict
12 some problem tenants.
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14 2.4 Mr. Forsberg told GMAC why he couldn't accept the second mortgage
15 modification, but stressed that he really wanted one on the first mortgage, which he would be
16 able to pay once he got new tenants in the Property. It had appeared that the second mortgage
17 modification was a requirement in order to get a first mortgage modification. When suddenly,
18 GMAC rescinded the offer on the second mortgage and provided him with a loan modification
19 on the first mortgage loan. He began making those payments in August 2011.
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21 2.5 Mr. Forsberg made those modified payments until April 2012 but fell behind
22 again because of other financial problems. He called GMAC to see what could be worked out
23 but he also asked that all notices be sent to his home address in Edmonds (he was staying with
24 his girlfriend at that time) because they scared the tenants if they were mailed to the Property.
25 He was in regular communication with GMAC and/or Ocwen during 2012 about the default,
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1 but in spite of that fact, and the fact that he regularly visiting the Property because he stayed
2 there when in Spokane caring for his parents, Andrew Luebke, an agent of Ocwen, broke into
3 the Property. Mr. Forsberg knows that it was Mr. Luebke and that he broke in on October 14,
4 2012 because he left notes all over the Property identifying himself and the date that he was
5 there. Mr. Forsberg discovered it on October 24, 2012 when he came over to Spokane to see
6 his parents and to try to rent the other unit. Missing from the Property was a guitar and the
7 light timer, which Mr. Forsberg was using to keep lights on in the unit. The deadbolt on one of
8 the doors had been changed, but Mr. Forsberg was able to access the building through another
9 door. He advised people at Ocwen about the damage and the missing items, to no avail.

11 2.6 Mr. Forsberg had been served with a Notice of Default at the Property on or
12 about October 16, 2012 by NWTs. That NOD demanded payment for the arrears on the loan,
13 which was delinquent by about seven months at that time. Mr. Forsberg did not make the
14 payment demanded within the thirty (30) days permitted by the statute. By December 2012,
15 Mr. Forsberg was living in the Property and trying to make repairs and get another tenant. He
16 was communicating with Ocwen about getting a loan modification and was sending in
17 packages for review. On or about December 28, 2012, an employee of NWTs signed a Notice
18 of Trustee's Sale ("NOTS") and caused it to be served upon the Property setting a sale date for
19 May 10, 2013. (The signature was not dated but indicated that it was "effective" on 12/28/12.)
20 The NOTS read that NWTs was pursuing the nonjudicial foreclosure sale on behalf of GMAC
21 Mortgage, LLC pursuant to "an Assignment/Successive Assignments" that was recorded in the
22 records of Spokane County, Washington. However, NWTs certainly knew that GMAC
23 Mortgage, LLC had ceased to exist as a result of the bankruptcy and that Ocwen had acquired
24 the servicing rights from the bankrupt entity in November 2012. Mr. Forsberg maintains, based
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1 upon information and belief, that NWTS relied upon a Beneficiary Declaration in issuing the
 2 NOTS that it knew was untrue because Ocwen was the servicer and the loan owner remains
 3 unidentified at this time.

4 2.7 Mr. Forsberg called again to Ocwen in January 2013 and spoke to someone
 5 there who asked again for him to send in another packet. He agreed to send one in but also
 6 received the NOTS at the Property on or about January 2, 2013. His new tenant found the
 7 Notice and was bothered by it, but he was able to smooth things over. By April 2013, Mr.
 8 Forsberg was able to bring the loan current and stop the foreclosure from proceeding. He was
 9 required to pay trustee fees to NWTS that he maintains were not reasonable, as required under
 10 the DTA. He was also required to pay unreasonable and unearned “fees” to Ocwen in order to
 11 prevent the foreclosure sale from occurring. Mr. Forsberg was able to stay current on the loan
 12 until sometime in June 2014, when he fell behind again. He is currently trying to obtain a loan
 13 modification again from the servicer, Ocwen, but for every amount of money that he has paid
 14 for unreasonable and unearned fees and costs, it diminishes his ability to get the Property back
 15 to current.

16 2.8 Meanwhile, because Mr. Forsberg was delinquent on the second mortgage loan,
 17 he received a Notice of Default (“NOD”) from Defendant Trustee Corps on behalf of the
 18 purported owner of the second mortgage loan. The NOD was signed and dated May 23, 2014;
 19 however, it indicated that the foreclosure was being done by Trustee Corps as a the “Duly
 20 Appointed Successor Trustee” on behalf of Defendant “Creditor Home Ally (sic) Financial II,
 21 LLC.” On the first page of the NOD, it reads that the foreclosure is being done by MERS, as
 22 designated nominee for GMAC Mortgage, LLC, an entity that has not existed for at least two or
 23 three years. Defendant Home Ally was created on August 14, 2013 when it was registered as a
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1 limited liability company in California. Presumably, the loan, if it is owned by Defendant
 2 Home Ally, was sold in 2013 and it was Defendant Home Ally attempting to foreclose on Mr.
 3 Forsberg, and not MERS or GMAC – and this fact was known to Defendant Ally.

4 2.9 All of the contact information provided for Defendant Trustee Corps identifies
 5 the address in Irvine, California. The only contact information listed for the Defendant in
 6 Washington is the Seattle address, which is only to be utilized for tendering reinstatements.
 7 This demonstrates exactly what Mr. Forsberg alleges about Defendant Trustee Corps' business
 8 model – it does not actually have an officer who resides in the State of Washington and it does
 9 not have an address in Washington state where the foreclosure activity actually occurs. The
 10 “Foreclosure Department” is identified as located in Irvine, California and communications
 11 about the debt are directed to that address as well. The person signing the document is
 12 identified as Matthew Kelley, Trustee Sales Officer, presumably an employee located in
 13 California where Defendant Trustee Corps is actually doing business, in contravention of
 14 Washington law. RCW 61.24.031. Further, the NOD does not include the name, address and
 15 phone number of the loan owner, as required under the DTA, and it does not include the name,
 16 address and phone number for the loan servicer. RCW 61.24.030(8).

17 2.10 Mr. Forsberg has suffered damages and injury as a result of all of the actions of
 18 the Defendants herein. Defendant Trustee Corps is presently trying to nonjudicially foreclose
 19 on the Property when it is not in compliance with Washington law and does not have the legal
 20 authority to do so. It appears to be doing so at the behest of Defendant Home Ally, even
 21 though none of the nonjudicial foreclosure documentation being utilized is in conformity with
 22 the requirements of the DTA. Mr. Forsberg has been required to pay for investigation of his
 23 claims related to the actions of these Defendants and has incurred travel costs and expenses
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1 associated therewith. Further, because of the wrongfully initiated nonjudicial foreclosure sale
 2 undertaken by Defendants Trustee Corps and Home Ally, Mr. Forsberg lost tenants who were
 3 residing in the property and paying rent, and he has been unable to obtain new tenants given the
 4 uncertainty of the situation.

5 **III. CAUSES OF ACTION**

6 First Cause of Action 7 Violation of the Consumer Protection Act 8 as Against All of the Defendants

9 3.1 Plaintiff incorporates herein by reference as though fully set forth at length each
 10 and every allegation and statement contained in Paragraphs 1 through 2.10, inclusive, of the
 11 Factual Allegations.

12 3.2 All of the Defendants have made numerous misrepresentations about the
 13 ownership of the Promissory Note and the “beneficiary” as defined by the Deed of Trust Act,
 14 as well as the identify of the owner of the beneficial interest in their Deed of Trust as described
 15 more particularly above. This information impacts the determination as to who has the legal
 16 right to attempt to foreclose on Mr. Forsberg’s Property. Mr. Forsberg maintains, based upon
 17 information and belief, that these entities have repeatedly engaged in making such
 18 misrepresentations to other Washington homeowners and/or there is a substantial likelihood
 19 that they will do so in the future. This is especially true regarding Defendant Trustee Corps
 20 given that it has entered into a Consent Decree with the Washington Attorney General in
 21 connection with its violations of the requirements of the DTA.
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23 3.3 All of these Defendants have engaged in a pattern of unfair and deceptive
 24 business practices in violation of the Washington Consumer Protection Act, RCW 19.86 *et*
 25 *seq.*, as more particularly described above in this Cause of Action and in the Factual Statement.
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All of these violations of the CPA by all of these Defendants entitle Plaintiff to damages, treble damages and reasonable attorney fees and costs pursuant to the statute, as well as permanent injunctive relief to make certain that other Washington consumers are not similarly harmed by the actions of these Defendants.

Second Cause of Action
Intentional and/or Negligent Misrepresentations against
All of the Defendants

3.4 Plaintiff incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in Paragraphs 1 through 2.10, inclusive, of the Factual Allegations, and Paragraphs 3.1 through 3.3, inclusive, of Causes of Action above.

3.5 Plaintiff maintains, as more particularly described above, that all of the Defendants have made numerous intentional and/or misrepresentations regarding their various relationships to Mr. Forsberg' mortgage loan.

3.6 These Defendants have intentionally misrepresented the identities of the true Note Holder and its ability to foreclose on Mr. Forsberg' Property.

3.7 All of these Defendants have made numerous misrepresentations about the identity of the Note Holder, the foreclosing trustee and the entire foreclosure process, as noted more particularly above.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. General damages in an amount to be determined at trial;
2. Treble damages for each and every violation of the Consumer Protection Act, plus attorney fees and costs;
3. Damages, including emotional distress, by the conduct of the Defendants in an

1 amount to be fully proved at the time of trial;

2 4. Injunctive relief which may be available under the CPA against the Defendants
3 prohibiting them from engaging in the prohibited acts in the future;

4 5. Injunctive relief by prohibiting the foreclosure of the Residence by any entity or
5 person until further order of this Court;

6 6. The value of lost use of Plaintiff's monies, past and future, according to proof at
7 time of trial; and

8 7. For such other and further relief as the Court deems equitable and just.

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10 Dated this 6th day of February, 2015.

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12 LAW OFFICES OF MELISSA A. HUELSMAN, P.S.

13
14 /s/ Melissa A. Huelsman
15 Melissa A. Huelsman, WSBA #30935
16 Attorney for Plaintiff
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